

## APPEAL NO. 010246

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 12, 2001, a contested case hearing was held. With respect to the issues before him, the hearing officer determined that the respondent's (claimant) lumbar disc herniation, lumbar radiculitis, and thoracic nerve root irritation were not a result of the compensable injury sustained on \_\_\_\_\_, and that the claimant sustained a new compensable injury on \_\_\_\_\_, resulting in disability from July 28, 2000, through the date of the hearing. The appellant (carrier 1), the carrier for the claimant's employer at the time of the alleged \_\_\_\_\_, injury, appealed asserting error in the determinations that the claimant sustained a new compensable injury and that she had disability. The respondent (carrier 2), the carrier for the claimant's employer at the time of her prior compensable injury, responded, urging affirmance of the determination that the claimant sustained a new injury and not a continuation of the prior injury. The appeal file does not contain a response to carrier 1's appeal from the claimant.

### DECISION

Affirmed.

This case turns on whether the claimant suffered a new compensable injury on \_\_\_\_\_, or is suffering a continuation of the injury she previously suffered in \_\_\_\_\_. This is an issue of fact. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Conflicting evidence was presented at the hearing as to whether the claimant continued to suffer the effects of her prior compensable injury or whether she sustained a new injury. It was within the province of the hearing officer to resolve the conflicts in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). As the fact finder, the hearing officer was free to accept the claimant's testimony and the medical evidence tending to demonstrate that the claimant had sustained a new injury over the contrary evidence from Dr. S. Nothing in our review of the record reveals that the hearing officer's determination that the claimant sustained a new compensable injury on \_\_\_\_\_, is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Disability is likewise a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. The hearing officer determined that the claimant had sustained her burden of proving that her \_\_\_\_\_, compensable injury was a producing cause of her disability. That determination is not so contrary to the great weight of the evidence as to compel its reversal on appeal. *Id.* Thus, we affirm the determination that the claimant had disability from July 28, 2000, through the date of the hearing.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge